IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1123 of 2001

to

FIRST APPEALNo 1134 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

KIRANSINH HIMMATSINH

Appearance:

Mr.K.P. Rawal, AGP, for the appellants

Mr. A.J. Patel for the respondents

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 30/07/2001

COMMON ORAL JUDGEMENT

1. Admitted. Mr. A.J. Patel, learned counsel, waives service of notice on behalf of respondent/s in each appeal. At the request of learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated April 5,

2000 rendered by the learned 5th Joint Civil Judge (S.D.), Bharuch, in Land Reference Cases Nos. 313 of 1991 to 324 of 1991. As common question of facts and law arise for my consideration, I propose to dispose of all these appeals by this common judgment.

3. The lands of the respondents-claimants situated in village Asha, Taluka: Jhagadiya, District Bharuch, were acquired for the public purpose of irrigation project by issuance of notification under Section 4(1) of the Act, which came to be published in the Government Gazette on March 23, 1989. After following the usual procedure, declaration under Section 6 of the Act was made which was published in the Government Gazette on August 24, 1989. The claimants claimed compensation at the rate of Rs.1500 per Are for their acquired lands, but, having regard to the materials placed before him, the Land Acquisition Officer made his award on February 28, 1990 and offered compensation to the claimants at the rate of Rs.245 per Are for irrigated land and Rs.205 per Are for non-irrigated land. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Bharuch, which were numbered as Land Reference Cases Nos.313 of 1991 to 324 of 1991. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No.317 of 1991.

4. Before the Reference Court also, the claimants claimed compensation at the rate of Rs.1500 per Are. To substantiate their claim of enhanced compensation of acquired lands, the claimants examined Bhupendrakumar Chunilal, at Exh.22, who was the claimant of Land Acquisition Reference No.316 of 1991. He deposed that all the acquired lands of village Asha were having the same fertility and the agriculturists used to raise crops of cotton, sugar-cane, banana, etc. He deposed that the agriculturists of village Asha used to get Rs.25,000/net income out of sale of agricultural produces per year. He deposed that lands of adjoining village Bamalla were acquired in the year 1988 and the Reference Court had determined the market value at the rate of Rs.1359/- per Are for the acquisition which had taken place in the year 1988. The witness produced certified copy of judgment and award rendered in Land Acquisition Reference No.221 of 1990 in respect of acquired lands of village Bamalla

at Exh.16. It has come in the evidence of this witness that aforesaid village Bamalla was at a distance of 2.1/2 kms away. The appellants did not lead any evidence before the Reference Court. The Reference Court, on the basis of the previous award Exh.16 of village Bamalla, determined market price of acquired lands at the rate of Rs. 700/- per Are for irrigated land and Rs.650/- per Are for non-irrigated lands as on March 23, 1989, by the impugned common award giving rise to these appeals.

5. Record and Proceedings of Land Acquisition References Nos.313 of 1991 to 324 of 1991 have been called for from the Reference Court. Learned Assistant Government Pleader, Mr. K.P. Rawal, for the appellants and learned advocate Mr. A.J. Patel for the claimants, have taken me through the record and proceedings of the Reference Court.

6. Having heard the learned advocates for the parties and on going through the record and proceedings of the case, in my opinion, the Reference Court has not committed any error in determining market value of the present acquired lands of village Asha in the year 1989 at the rate of Rs.700/- per Are for irrigated land and Rs.650/- per Are for non-irrigated lands. The lands of previous award Exh.16 and the present acquired lands were similar in nature having the same fertility and same advantageous features. It is not brought to the notice of this Court that the previous award Exh.16 was challenged in the higher forum. Even though the present acquired lands were similar in nature with the previously acquired lands of village Bamalla, the Reference Court did not award compensation of the acquired lands of village Asha at the same rate of the market value of the previously acquired lands of village Bamalla on the ground that the claimants before the Land Acquisition Officer had only claimed compensation at the rate of Rs.700 per Are. In my view, the Reference Court fell in error in relying upon Section 25 of the Act by holding that the claimants cannot claim more compensation than the rate at which they had raised their claim before the Land Acquisition Officer. Since there is no appeal by the claimants for enhancement of compensation, no additional compensation can be awarded to them. Taking into consideration the over all view of the matter, I am of the view that the Reference Court has awarded a just and adequate compensation for the acquired lands of village Asha. Therefore, the determination of market value of the present acquired lands of village Asha as on March 23, 1989, arrived at by the Reference Court at the rate of Rs.700/per Are for irrigated lands and Rs.650/-

per Are for non-irrigated lands, is, hereby, confirmed.

7. The benefit extended to the respondents-claimants under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and does not call for any interference in these appeals. However, the claimants would not be entitled to solatium on the additional amount of 12% under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of Prem Nath Kapur and another vs. National Fertilizers Corporation of India Limited and others, reported in (1996) 2 Supreme Court Cases 71. However, learned counsel Mr. A.J. Patel for the claimants has placed reliance on the decision of the Supreme Court in the case of Annie Varghese and others vs. State of Kerala and others, reported in (1999) 6 Supreme Court Cases page 551, where, the Supreme Court has observed that, "if the Constitution Bench upholds the contention that the interest on solatium is to be granted, the petitioner can move the High Court to amend judgment and decree for carrying out the legal position declared by the Constitution Bench in that regard." In view of the observation of the Supreme Court in the case of Annie Varghese (supra), it would be open for the claimants to move the High Court to amend the judgment and decree for carrying out the legal position declared by the Constitution Bench.

8. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

9. It is submitted by the learned counsel for the claimants that the claimants' lands were acquired way back in 1989 and till date the amount awarded by the Reference Court is not deposited by the Acquiring Body. Therefore, the Acquiring Body shall make all endeavour to deposit or pay the awarded amount to the claimants within four months from today.

July 30, 2001 (M.H. Kadri, J.)
(swamy)